

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

GENE GALES

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07cv485WJG-JMR
(APPEAL NO. 08-60643)

MIKE FARMER, *ET AL.*

DEFENDANTS

ORDER SETTING PAYMENT SCHEDULE

THIS MATTER is before the Court, *sua sponte*, for the purpose of revisiting Plaintiff Gene Gales' motion [168] for leave to proceed *in forma pauperis* [IFP].

Plaintiff has filed two notices of appeal in this cause. (Ct. R., Docs. 151, 166.) His motion to proceed IFP on appeal was filed into the record of this Court on September 12, 2008, after the Court entered its Memorandum Opinion and a separate Final Judgment on August 26, 2008. (Ct. R., Docs. 164, 165.) Since the entry of the Court's order granting IFP, (Ct. R., Doc. 171], it has been pointed out to the Court that while Plaintiff's motion was not filed until September 12, 2008, it was signed by Plaintiff on July 2, 2008, the same signature date appearing on Plaintiff's Notice of Appeal of the magistrate judge's entry of a Report and Recommendation, which notice was filed into the court record on July 3, 2008. (Ct. R., Doc. 151.) Despite more than two months having elapsed between the signature date and the filing date, and though no explanation appears for the delay in filing, the Court concludes that Plaintiff intended to file the motion for IFP in conjunction with his first notice of appeal. Because the motion was not actually filed until after the filing of the Court's Final Judgment, (Ct. R., Doc. 165), and because the Court treated Plaintiff's motion as his

request to proceed IFP on the appeal of that Final Judgment, the Court will not disturb its Order granting the Plaintiff IFP status on his second notice of appeal of that Judgment.

The Court therefore finds that as far as the motion for IFP applies to the notice of appeal [151] of the magistrate judge's Report and Recommendation, that the application includes statements of his assets, of his inability to prepay fees, of the nature of the action, and of his belief that he is entitled to redress. Pursuant to 28 U.S.C. § 1915, as amended, and upon review of Plaintiff's application, and the record in this cause, it is hereby,

ORDERED that Plaintiff's motion [168] to proceed IFP be, and is hereby granted, except to the extent that Plaintiff is required to make payments as set forth below. If judgment is rendered against the Plaintiff, and the judgment includes the payments of costs under section 1915, Plaintiff will be required to pay the full amount of the costs, notwithstanding that his application to proceed IFP has been granted. It is further,

ORDERED that Plaintiff shall pay the full filing fee of \$455.00 through payments made to the Clerk of Court from Plaintiff's prison account. Said payments will be mailed to Clerk of Court, 245 East Capitol Street, Suite 316, Jackson, Mississippi 39201, with Plaintiff's name, civil action number 1:07cv485WJG-JMR and appeal number 08-60643 written on the payment. It is further,

ORDERED that Plaintiff's inmate trust fund account statement for the six-month period immediately preceding the submission of his motion to proceed IFP dated September 12, 2008, (Ct. R., Doc. 168), reflects a current balance of \$0. Plaintiff is therefore required to pay an initial partial filing fee of \$10.00. South Mississippi Correctional Institution [SMCI] in Leakesville, Mississippi, or any other prison at which Plaintiff may be incarcerated, is required by law when Plaintiff's prison account has sufficient funds to collect the initial partial filing fee of \$10.00, and

forward it to the Clerk of Court, 245 East Capitol Street, Suite 316, Jackson, Mississippi 39201, with Plaintiff's name, civil action number 1:07cv485WJG-JMR and appeal number 08-60643 written on the payment. It is further,

ORDERED that after payment of the initial partial filing fee, Plaintiff is required to make monthly payments of twenty percent (20%) of the preceding month's income¹ credited to his prison account until he has paid the total filing fee of \$455.00. SMCI, or any other prison at which Plaintiff may be incarcerated, is required by law, when Plaintiff's prison account exceeds the sum of \$10.00, to forward monthly payments with the Plaintiff's name, civil action number 1:07cv485WJG-JMR and appeal number 08-60643 written on the payment, to the Clerk of Court, 245 East Capitol Street, Suite 316, Jackson, Mississippi 39201, with each payment being a sum which equals twenty percent (20%) of the preceding month's income credited to Plaintiff's prison account.

The Clerk is directed to mail copies of this Order to the Plaintiff; and to Tammy Robertson, MDOC Inmate Banking Department, South Mississippi Correctional Institution, Post Office Box 1419, Highway 63 North, Leakesville, Mississippi 39451. It is further,

ORDERED that the Order granting IFP, (Ct. R., Doc. 171), relative to the second notice of appeal of the Final Judgment, (Ct. R., Doc. 165), remains unchanged and in full force and effect.

SO ORDERED, this the 2nd day of December, 2008.

Walter J. Fox III

UNITED STATES SENIOR DISTRICT JUDGE

¹Income shall mean "whatever sums enter a prison trust account, disregarding the source." *Lucien v. DeTella*, 141 F.3d 773, 776 (7th Cir. 1998).